

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | |
|---------------------------------------|-------------------------|
| JAMES GEMELAS, On Behalf of Himself) | No. 1:08-cv-00236 |
| and All Others Similarly Situated,) | |
|) | <u>CLASS ACTION</u> |
| Plaintiff,) | |
|) | Judge Dan Aaron Polster |
| v. |) |
|) | |
|) | |
| THE DANNON COMPANY, INC.,) | |
|) | |
| Defendant.) | |
| _____) | |

DECLARATION OF JAYNE A. GOLDSTEIN IN SUPPORT OF PLAINTIFF'S
SUPPLEMENTAL MOTION FOR ATTORNEYS' FEE AND EXPENSES

I, Jayne A. Goldstein declare that:

1. I am currently senior counsel to the firm Shepherd Finkelman Miller & Shah, LLP ("SFMS") and have been in that position since September 15, 2008. Prior to my joining SFMS, I was a founding partner of Mager & Goldstein, LLP ("M&G"). I am one of the attorneys representing the plaintiffs and Class members in the Dannon Lawsuits, including the above-entitled action.¹ I am submitting this declaration in support of SFMS' supplemental application for an award of attorneys' fees and reimbursement in connection with the services rendered in the Dannon Lawsuits. I have personal knowledge of the matters set forth, and if called as a witness, would be competent to testify to them.

2. My firm is one of the Class Counsel for Plaintiff and the Class in the Dannon Lawsuits, including the above-captioned matter.

¹ All capitalized terms not defined herein shall have the same meanings set forth in the Amended Stipulation of Settlement, filed, January 20, 2010 ("Stipulation" or "Settlement") (D.E. No. 42) and the Stipulation of Amendment to Settlement and Order, entered May 24, 2010 (D.E. No. 56).

3. Beginning in January 2007, more than one year before the first Dannon Lawsuit was filed, M&G began investigating the potential claims related to Defendant's false and deceptive marketing and advertising. Utilizing my skills as a registered nurse and an attorney, M&G conducted an extensive investigation, which included gathering commercials and other marketing materials and reviewing substantial scientific literature and consulting experts. We conducted research about various experts, interviewed with experts in the relevant scientific field and researched Defendant's marketing practices and the then-emerging probiotic food marketing trend. My firm began working with Jonathan Stein and Timothy Blood in May 2007. We held in-person, full day meetings with co-counsel from across the country, and worked with third party organizations investigating the claims at issue.

6. In October, 2007, M&G was retained by Patricia Weiner, the plaintiff in the first filed Dannon Lawsuit. On January 23, 2008, *Wiener v. The Dannon Company, Inc.*, No. CV08-00415 (C.D. Cal.) ("Weiner") – was filed in the United States District Court for the Central District of California. The *Wiener* complaint was the result of several months of drafting, consultation with experts, and significant research into Defendant's marketing and advertising, and the purported scientific substantiation behind the claims at issue. Subsequently, SFMS was retained to represent the plaintiffs in *Park, et al. v. The Dannon Company, Inc.*, No. 08-81147-CIV (S.D. Fla. Oct. 8, 2008) ("Park"); *Wegrzyniak v. The Dannon Company, Inc.*, No. 08-cv-05992 (D.N.J. Dec. 8, 2008) ("Wegrzyniak") and *Bednarz v. The Dannon Company, Inc.*, No. 09-cv-00077 (D. Conn. Jan. 20, 2009) ("Bednarz").

7. My firm was intimately involved in all aspects of the prosecution of the Dannon Lawsuits, by conducting legal and factual research prior to filing the Complaints, drafting and reviewing the Complaints, reviewing and editing briefs, participating in document review and discovery, preparing for and taking and defending depositions, attending court hearings, and

participating in expert-related discovery, assisting in pre-trial planning and strategy, attending motion hearings, status conferences and mediation sessions.²

8. My firm also played a very active role in the identification and interaction with the scientific experts in the Dannon Lawsuits as well as researching and reviewing studies and materials produced by Defendant's scientific experts.

9. In addition, as class counsel, I attended the hearing for final approval as well as two additional hearings which dealt with objectors and motions for bonds. I worked with my co-counsel to come to a resolution with the objectors. I also stayed in continuous contact and communicated with the plaintiffs in the *Weiner, Park, Wegrzyniak* and *Bednarz* cases.

10. The total number of hours spent on this litigation by SFMS, LLP from June 1, 2010 through June 1, 2011 is 74.50. The total lodestar amount for attorney and professional hours based on the rate regularly charged by those attorneys and professionals is \$48,142. The hourly rates shown below are the usual and customary rates charged for each individual in all of our class action cases. A breakdown of the lodestar is as follows:

June 1, 2010 – June 1, 2011

SFMS, LLP

| NAME | HOURS | RATE | LODESTAR |
|--------------------|-------|--------|-------------|
| James C. Shah | 2 | 700.00 | \$1,400.00 |
| Jayne A. Goldstein | 71 | 650.00 | \$46,150.00 |
| Natalie F. Bennett | .4 | 650.00 | \$260.00 |
| Nathan Zipperian | .4 | 550.00 | \$220.00 |
| Sue Moss | .7 | 160.00 | \$112.00 |
| | | | |
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| | | | |
| | | | |
| | | | |
| TOTAL | 74.50 | | \$48,142.00 |

² See Declaration of Timothy G. Blood in Support of Plaintiff's Motion For Final Approval of Settlement, For Attorneys' Fees and Expenses, and Response to Objections filed on June 9, 2010 for a more detailed description of the litigation and efforts of counsel.

11. SFMS incurred a total of \$3,308.83 in expenses since June 1, 2010 and connection with the prosecution of this litigation. They are broken down as follows:

| EXPENSE CATEGORY | TOTAL |
|---------------------------------|-------------------|
| Meals, Hotels, & Transportation | \$3,288.83 |
| Long Distance Telephone calls | \$20.00 |
| | |
| | |
| | |
| | |
| | |
| TOTAL | \$3,308.83 |

12. The expenses pertaining to this litigation are reflected in the books and records of SFMS. These books and records are prepared from expense vouchers, check records and other documents and are an accurate record of the expenses.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 27th day of May, 2011, at Weston, Florida.



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